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No. 02-1221

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2002

UNITED STATES SHOE CORP., PETITIONER

v.

UNITED STATES OF AMERICA, RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

BRIEF FOR AMICI CURIAE CHEVRONTEXACO, INC. ET AL. IN SUPPORT OF PETITIONER

John M. Peterson
Counsel of Record
Curtis W. Knauss
Maria E. Celis
NEVILLE PETERSON LLP
Counsel for Amici Curiae
80 Broad Street, 34th Floor
New York, New York 10004
(212) 635-2730

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BRIEF AMICUS CURIAE

Pursuant to Supreme Court Rule 37.3(a), upon written consent of all parties, *amici curiae* ChevronTexaco Inc., et al. hereby submit this brief in support of Petitioner United States Shoe Corp., and urge that the petition for a writ of *certiorari* be granted.

INTEREST OF *AMICI CURIAE*[1]

Amici curiae are exporters of waterborne commercial cargo who paid the Harbor Maintenance Tax ("HMT"), which this Court unanimously struck down as unconstitutional in *United States v. United States Shoe Corp.*, 523 U.S. 360 (1998). Each of them received United States Court of International Trade ("CIT") judgments awarding them refunds of tax principal, plus interest. However, payment of interest has been stayed pending a final judicial determination

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[1]. *Amici curiae* on whose behalf this brief are filed are: ChevronTexaco Inc. and its affiliates Chevron USA Inc.; Chevron Chemical Company Inc.; Chevron Chemical International Sales Inc.; Chevron International Oil Company; Chevron Overseas Petroleum Company, Inc.; Crompton Corporation; Del Monte Foods, Inc.; Eastman Chemical Company, Inc.; Fieldston Clothes, Inc; General Mills, Inc.; Marconi Systems (f/k/a/ Gilbarco, Inc.); Michelin North America, Inc.; Rockwell International Corporation: Totes-Isotoner Corporation; and Xerox Corporation.

Counsel for the parties have consented to the filing of this *amicus* brief, and the letters of consent are being filed with this Court under separate cover. Pursuant to Supreme Court Rule 37.6, *amici* state that no counsel for a party authored this brief in whole or in part. Further, no person or entity other than the listed *amici* made a monetary contribution to the preparation or submission of this brief.

concerning whether, and to what extent, the government must pay interest on refunds of this unconstitutional tax.

In addition, *amici* have each filed applications with the United States Customs Service pursuant to 19 C.F.R. § 24.24(d) (2001), seeking refunds of additional HMTs not covered by the CIT judgments. Pursuant to Customs' regulation, these refunds are being paid without interest, pending a final judicial determination concerning whether interest is payable.

The Court's decision in this case will almost certainly govern the determination of whether *amici* are entitled to receive interest with respect to refunds of the export HMTs they paid. Accordingly, the interests of *amici* – and thousands of other exporters who paid the export HMT – are co-extensive with those of Petitioner.

SUMMARY OF ARGUMENT

In statutes governing the administration and enforcement of the HMT, Congress has waived the government's sovereign immunity and has required that interests of excess HMTs be refunded with interest. The Federal Circuit erred in failing to recognize and apply the governing interest provision.

In the *Water Resources Development Act*, 26 U.S.C. § 4462(f)(1)("WRDA") which imposed the HMT, Congress directed that the HMT was to be treated, for administration and enforcement purposes, "as if such tax were a customs duty." The WRDA adopted, by extension, all administration and enforcement provisions of the Customs laws, and made them applicable to the HMT. Section 505 of the Tariff Act of 1930, *as amended* (19 U.S.C. § 1505), which unquestionably

pertains to the "administration and enforcement" of customs duties, mandates the payment of interest on refunds of all excess customs duties collected. The Federal Circuit erred in failing to read these related statutes *in pari materia*, and frustrated Congressional intent by failing to award interest to Petitioner.

The Federal Circuit's error is particularly glaring, since Congress in 1993 expanded 19 U.S.C. § 1505's waiver of sovereign immunity to require that interest be paid on *all* refunds of excess customs duties. Congress must be presumed to have understood that this expanded waiver applied to the HMT, because the legislature had previously specified, in the WRDA, that the HMT be treated as a customs duty for § 1505's administration and enforcement purposes.

The Federal Circuit's decision also contravenes this Court's admonition that the Export Clause of the Constitution (U.S. Const., Art. 9, Cl. 5), which prohibits the taxation of all exports, must be "enforced in accordance with its *letter and spirit.*" *United States v. Hvoslef*, 237 U.S. 1, 15 (1915). By requiring the government to return the principal sums of the HMTs unconstitutionally exacted from exporters, but allowing the government to retain for itself the time-value of those sums, the Federal Circuit not only frustrated specific Congressional intent, but also the explicit command of the Framers that no burden of any kind be placed on exports. *See Fairbank v. United States*, 181 U.S. 283 (1901).

The petition for *certiorari* in this case raises significant legal issues, as well as Constitutional issues of first impression. Given the importance of these issues, and the fact that the Court's decision in this case will likely affect the refund claims of thousands of other exporters who were unconstitutionally taxed (and whose claims involve hundreds

of millions of dollars), *amici* submit that the writ should be granted.

STATEMENT

Amici curiae respectfully file this brief on consent of all parties in support of petitioner United States Shoe Corp., urging that this Court grant the request for issuance of a writ of *certiorari* to the Court of Appeals for the Federal Circuit.

Amici curiae concur with the Statement of the Case set forth in petition for *certiorari*.

REASONS FOR GRANTING THE WRIT

A. Congress Has Expressly Waived the Government's Sovereign Immunity and Required the Payment of Interest on Refunds of Harbor Maintenance Taxes

The government must pay interest on money it owes if it has by statute waived its sovereign immunity. *Library of Congress v. Shaw*, 478 U.S. 310, 311 (1986). Section 505 of the Tariff Act of 1930, *as amended* (19 U.S.C. §1505) contains such a waiver with respect to Customs duties, directing the Customs Service to "refund any excess monies deposited, together with interest thereon, as determined upon a liquidation or reliquidation." *Id.*, §1505(b).[2] The Water

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[2] Section 505(b) of the Tariff Act establishes the government's obligation to pay interest on refunds of excess Customs duties, while Section 505(c) identifies the time period for which interest is calculated and paid.

Resources Development Act ("WRDA"), which imposed the HMT, expressly requires that "all administrative and enforcement provisions of [the] Customs laws and regulations shall apply in respect of the tax . . . (and in respect of persons liable therefor) **as if such tax were a customs duty**." 26 U.S.C. § 4462(f)(1) (emphasis added).

The WRDA, 26 U.S.C. § 4462(f) extends the

Section 505(b) (19 U.S.C. §1505(b)) provides that:

> The Customs Service shall collect any increased or additional fees due, together with interest thereon, or **refund any excess monies deposited, together with interest thereon**, as determined on a liquidation or reliquidation. Duties, fees and interest determined to be due on liquidation or reliquidation are due 30 days after the issuance of the bill for such payment. Refunds of excess moneys deposited, **together with interest thereon**, shall be paid within 30 days of liquidation or reliquidation. Emphasis added.

Section 505(c) (19 U.S.C. §1505(c)) states that:

> Interest assessed due to an underpayment of duties, fees or interest shall accrue, at a rate determined by the Secretary, from the date the importer of record is required to deposit estimated duties, fees and interest to the date of liquidation or reliquidation of the applicable entry or reconciliation. Interest on excess moneys deposited shall accrue, at a rate determined by the Secretary, from the date the importer of record deposits such estimated duties, fees and interest . . . . to the date of liquidation or reliquidation of the applicable entry or reconciliation.

administration and enforcement provisions of the Tariff Act, including 19 U.S.C. § 1505, to the HMT. When the two statutes are properly read *in pari materia*, it is clear that interest must be paid on refunds of the HMT, just as interest is paid on refunds of customs duty.

However, the Federal Circuit ruled that 19 U.S.C. § 1505, "does not apply to exports because it speaks only to imports." Pet. App. at 6a. Following its decision in *International Business Machines Co. v. United States*, 201 F.3d 1367, 1374 (Fed. Cir. 2000), *cert. den.*, 531 U.S. 1182 (2002), the Federal Circuit admitted that Section 1505 was a law relating to the "administration and enforcement" of customs duties, but ruled that it did not apply to the HMT, since it speaks of excess duties "determined on a liquidation or reliquidation" of a customs "entry." 19 U.S.C. § 1505(b),(c). "Entry," "liquidation" and "reliquidation" are statutory terms of art associated with the importation of merchandise and the assessment of duties thereon.

What the Federal Circuit failed to acknowledge, however, was that Section 1505 contains an express Congressional waiver of sovereign immunity requiring the payment of interest on refunds of *all* Customs duties. To the extent that the Federal Circuit declined to award petitioner interest on its HMT refund, its decision ignores the express command of the governing statute, the WRDA, that the HMT be treated, for administration and enforcement purposes "as if such tax were a customs duty."

The breadth of Congress' waiver of sovereign immunity is best understood by briefly examining the procedures by which Customs duties are collected.

Because the Export Clause of the Constitution

prohibits the levying of a tax on exports, the term "Customs duties" is understood in United States law to connote the imposition of a tax on imported merchandise. *United States Shoe Corp. v. United States*, 523 U.S. 360, 367 (1998). Customs duties are deposited on imported merchandise at the time the importer of record files an "entry." 19 U.S.C. § 1484.[3] Customs is required to "liquidate"[4] the entry, determining the rate and amount of duty chargeable on goods covered by the entry, and also determining "any increased or additional duties, taxes and fees due or any excess of duties, taxes and fees deposited." 19 U.S.C. § 1500(d).[5] Because all Customs duties are collected using the "entry" and "liquidation" procedures of the Tariff Act, it follows that 19 U.S.C. § 1505 requires the payment of interest on *all* refunds of customs duties.

By failing to construe the Tariff Act and 26 U.S.C. § 4462(f)(1) *in pari materia*, the Federal Circuit disregarded the governing legislation and failed to effectuate Congressional intent. Customs duties are refunded with interest, pursuant to 19 U.S.C. §1505, which is admittedly an "administrative and

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[3] An "entry" consists of certain documents, required to be filed with the appropriate Customs officer, to secure the release of imported merchandise from Customs custody. 19 C.F.R. § 142.3. "Entry" is also used to connote the act of filing that documentation.

[4] "Liquidation" is defined at "the final computation or ascertainment of the duties * * * accruing on an entry. 19 C.F.R. § 159.1.

[5] Customs may also "reliquidate" the entry, either voluntarily, or following the allowance of a protest or the issuance of a judgment by the United States Court of International Trade. *See* 19 U.S.C. §§ 1501, 1503.

enforcement provision" of the Customs laws. Congress has provided that the administrative and enforcement provisions, including §1505, must be applied to the HMT "as if such tax were a customs duty." 26 U.S.C. § 4462(f)(1). *Yet under the Federal Circuit's decision, the export HMT is* ***not*** *treated as a customs duty.* The waiver of sovereign immunity contained in 19 U.S.C. § 1505, and the extension of that waiver contained in 26 U.S.C. § 4462(f)(1) are both disregarded.

Such an erroneous construction not only disregards the plain language of the statutes, but ignores the longstanding canon of statutory construction that, where two statutes are related, they must be construed *in pari materia*. *See* 2B SUTHERLAND, STATUTES AND STATUTORY CONSTRUCTION, Section 51.07 at p. 267 (6th ed. 2000)(special class of related statutes created where one statute adopts the terms of the other without restating them). *See also Beals v. Hale*, 45 U.S. 37, 53(1946); *See Lorillard v. Pons*, 434 U.S. 575, 578 (1978).

The Federal Circuit in this case relied upon its decision in *IBM*, which held that 19 U.S.C. § 1505(c) did not apply to export HMT refunds, since it "contemplates an entirely different factual scenario from the one before us," one in which the terms "importer of record," "liquidation" and "entry" are used Pet. App. 128a. This "scenario," however, is merely the legal administrative and enforcement procedure for the collection, ascertainment and refund of *customs duties* – precisely the scenario which Congress, in 26 U.S.C. § 4462(f)(1), adopted for the HMT.

The WRDA did not specify procedures for the determination, collection, adjustment, or refund of the HMT. Rather, Congress left the selection of procedures to the Customs Service, subject of course to the statutory command

that the HMT be treated, for administrative and enforcement purposes, "as if such tax were a customs duty." By regulation, Customs has decided that, for reasons of administrative convenience, certain HMTs (those collected on shipments unloaded at United States ports and not deposited in Foreign Trade Zones) will be collected using the "entry" and "liquidation" procedures utilized for customs duties,[6] while some HMTs (e.g., those on exports, Foreign Trade Zone deposits, and inland waterway movements) will be collected by means of a quarterly returns.[7] Where Customs collects HMTs using the entry procedure, the agency pays interest on refunds of the tax under authority of 19 U.S.C. § 1505[8]. By virtue of the Federal Circuit's decision in this case, however, all other HMT refunds are paid without interest.

Nothing in the WRDA or its legislative history suggests that Congress intended to apply the interest provisions of the Customs laws to some HMTs, but not to others. Moreover, nothing in the law or its legislative history suggests that Congress delegated to Customs the power to determine whether, and to what extent, the Congressional

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[6] *See* 19 C.F.R. § 24.24(e)(2)(ii) (2001) ("The port fee use on unloading imported cargo shall be paid in accordance with the normal customs collection procedures set forth in §§ 24.1 and 141.1 of this chapter, except as provided for merchandise admitted into foreign trade zones in paragraph (e)(2)(iii) of this chapter.")

[7] *See* 19 C.F.R.. § 24.24(e)(1)(ii) (2001) (domestic vessel movements), § 24.24(e)(2)(iii)(2001) (import vessel merchandise deposited in Foreign Trade Zones), §24.24(e)(3) (2001) (passenger carriage).

[8] *See, e.g., Customs Headquarters Ruling 227649 of October 3, 1997.*

waiver of sovereign immunity with respect to interest should apply to the HMT. Under the circuit court's analysis, the existence of a waiver of sovereign immunity is determined solely by Customs' regulatory choice of a collection mechanism.

That Congress elected not to use the terms "entry" or "liquidation" in providing for the collection of certain HMTs is of no moment. The WRDA created a "legal fiction,"[9] requiring that the HMT be administered "as if" it were a Customs duty. Even if Customs elected not to use the term "entry" to describe the documentary submission required of certain HMT taxpayers, nor the term "liquidation" to describe the final determination of the tax owed, 26 U.S.C. §4462(f)(1) requires the HMT to be treated "as if" the taxes were Customs duties to which these administrative and enforcement procedures had been applied.

Where Congress extends one law to cover another, as it did here, the statutes are *in pari materia* and must be read together so that both are given full effect. In this case, the Federal Circuit interpreted the WRDA and the Tariff Act in a way which nullifies Congress' extension of the Customs

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[9] The creation of a "legal fiction" was necessary and purposeful. Congress understood that the HMT was not a customs duty, but rather a tax, codified in the Internal Revenue Code. Customs likewise recognized that the tax did not merely fall upon imports, but also on domestic and export movements of merchandise, and on the provision of *services,* such as passenger carriage. Rather than specifying different collection and determination procedures for each taxable circumstance, the WRDA simply adopted the Customs laws by extension, requiring that the HMT in all its forms be treated "as if" it were a Customs duty.

laws to some HMTs. Such a construction violates the "elementary canon of construction that a statute should be interpreted so as not to render one part inoperative." *Dep't of Revenue of Oregon v. AFC Industries, Inc.*, 510 U.S. 332 at 340 (1994), citing *Mountain States Telephone and Telegraph Co. v. Pueblo of Santa Ana*, 427 U.S. 237, 249 (1985).

The Federal Circuit's error is all the more glaring given that, years after the WRDA was enacted, Congress expanded the 19 U.S.C. § 1505(c) waiver of sovereign immunity regarding the payment of interest on Customs duty refunds. Former 19 U.S.C. § 1520(d) limited the payment of interest to amounts paid as "increased or additional duties under section 1505(c) of this title" – that is, duties assessed at the time of liquidation of the entry. This resulted in the payment of interest on some duty refunds, but not others. *See Kalan, Inc. v. United States*, 944 F.2d 847 (Fed. Cir. 1991), *cert. denied*, 503 U.S. 906 (1992).[10]

Congress corrected this anomaly in Section 642 of the

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[10] The former provisions on interest created an anomaly. For example, assume that two importers entered the same product, and each was assessed $100 in customs duties. However, Company A paid the full $100 at the time of entry, while Company B paid $60 at the time of entry and was assessed an additional $40 upon liquidation. If both importers protested the assessments, and ultimately secured determinations that the products were duty free, Company B would receive its refund with interest, but interest would be paid only on the $40 assessed as "increased or additional duties" upon liquidation. Company A would receive its refund without interest, because its duties were all paid at the time of entry and no "increased or additional duties" were imposed at liquidation. Thus, even though Customs wrongly held its funds for a longer time, Company A received no interest whatsoever, a result upheld by the Federal Circuit's *Kalan* decision.

North American Free Trade Implementation Act of 1993, Pub. L. No. 103-182, 107 Stat. 2057, which amended 19 U.S.C. § 1505(c) to require the payment of interest on *all* refunds of excess customs duties. The Congressional purpose was "to provide equity in the collection and refund of duties and taxes, together with interest, by treating collections and refunds equally." *See* H.Rep. 103-361(I), 103rd Cong., 1st Sess., *reprinted at* 1993 U.S.C.C.A.N. 2552, 2690.

In thus amending 19 U.S.C. §1505(c) to expand the waiver of sovereign immunity with respect to the payment of interest on duty refunds, Congress is presumed to have been aware of its earlier enactment of the WRDA, and its extension of the administrative and enforcement provisions of the Customs laws to the HMT. *See, e.g.*, *Cannon v. University of Chicago*, 441 U.S. 677, 696-97 (1979). Further, where Congress adopts a statute by reference, it is presumed to adopt all subsequent modifications and amendments of the referenced statute, and to have intended that both statutes remain fully effective. *See* 2B SUTHERLAND, STATUTES AND STATUTORY CONSTRUCTION § 51.08 (6th ed. 2000), and *Morton v. Mancari*, 417 U.S. 535, 551 (1974).

Congress has waived statutory immunity against the payment of interest on refunds of taxes (28 U.S.C. §2411) and customs duties (19 U.S.C. §1505). Yet the Federal Circuit has ruled (in *IBM*) that the HMT may not be treated as a "tax" for purposes of 28 U.S.C. §2411 precisely because it must be treated "as if it were a customs duty." But confronted with the statute requiring the payment of interest on customs duties, 19 U.S.C. §1505, the Federal Circuit has ruled that it will not treat the HMT as a customs duty because it is collected in the manner of a tax. Far from reconciling statutes *in pari materia*, these self-contradictory decisions establish a "Catch-22" paradox, leaving the export HMT as virtually the

only Federal tax which is refunded without interest.

It is unreasonable to assume that Congress intended to waive sovereign immunity to require the payment of interest on refunds of taxes which are authorized by the Constitution, but to deny interest on refunds of a tax held to be unconstitutional. Because the Federal Circuit's decision ignores governing law and yields an unreasonable outcome, the writ of certiorari should issue.

B. The Export Clause of the Constitution Requires the Payment of Interest

The Export Clause of the Constitution provides a cause of action with a monetary remedy that requires the refund of unconstitutionally imposed taxes. *United States v. United States Shoe Corp.*, 523 U.S. 360 (1998). Because the Export Clause *absolutely* prohibits the imposition of any Federal pecuniary burden on exports, this Court has ruled that its "restriction should be enforced in accordance with its *letter and spirit*." *United States v. Hvoslef*, 237 U.S. 1, 15 (1915) (emphasis added). By holding that the export HMT could be refunded without payment of interest, the Federal Circuit disregarded the spirit of the clause and countenanced the placing of a Federal pecuniary burden on exports. Because the Federal Circuit did not enforce the Export Clause according to this Court's direction in *Hvoslef* and other cases, its denial of interest is erroneous and a writ of *certiorari* should issue to allow review of the decision.

The Export Clause prohibition on the taxation of exports is absolute. *Pace v. Burgess*, 92 U.S. 372 (1875). It requires that "exportation, all exportation, shall be free from national burden." *United States v. Hvoslef*, 237 U.S. at 15,

citing Fairbank v. United States, 181 U.S. 283, 290 (1901). This Court recently noted that there is "substantial evidence from the Debates that the proponents of the Clause fully intended the breadth of scope that is evident in the language." *United States v. International Business Machines Corp.*, 517 U.S. 843, 859-860 (1996).

Monetary remedies for Export Clause violations must be fashioned to completely eliminate national burdens on exports, and carry out the Framers' intent. The remedy for an Export Clause violation is not specified in the Constitution's text, but has been discerned by this Court to be a monetary one, which must leave exports completely unburdened. In *Hvoslef*, 237 U.S. 1, 15 (1915), this Court noted that "no legislation can be tolerated which, although it may not conflict with the letter, destroys that spirit and purpose of the restriction imposed . . . ." Remedial measures fashioned by the courts must ensure that "exportation, all exportation, shall be free from national burden." *Id.*, citing *Fairbank*, 181 U.S. at 290.

In this case, the Federal Circuit has ruled that the governing statutes, 26 U.S.C. § 4462(f)(1) and 19 U.S.C. § 1505, should be interpreted in a way which countenances the imposition of a Federal burden on exports, by allowing the Federal government to exact a percentage of the value of exported merchandise, retain that money for a long period, and then (under judicial compulsion) refund the unconstitutionally-exacted money without paying interest. This is as much a burden on exports as if Congress had passed a law compelling exporters to make a long-term, interest free loan to the government. That the taxation – the deprivation of funds — is temporary, rather than permanent, does not alter the fact that a pecuniary burden has been imposed on exported goods. Even assuming the governing statutes did

not explicitly provide the waiver of sovereign immunity needed to support an award of interest, the Export Clause of the Constitution must be read to require that interest be paid.

This Court has long acknowledged the unique nature of the Export Clause. "[I]t is clear that the framers of the Constitution intended not merely that exports should not be made a source of revenue to the National Government, but that the National Government should put nothing in the way of burden upon such exports." *Fairbank v. United States*, 181 U.S. 283, 292 (1901). A view of the HMT statute which allows the government to benefit from the taxation of exports violates not merely the letter of the Export Clause, but also its spirit.

A refund of HMT principal, without interest, does not completely undo the harm which the Export Clause seeks to prevent, i.e., subjecting exported goods to "national burden."

Under the Federal Circuit's decision, the Federal government might enact a tax on exported merchandise, knowing that it would ultimately be compelled to repay the taxes collected,[11] but would in the interim have cost-free use of the funds. The government might invest the monies to produce additional interest revenue (as, indeed, the Harbor Maintenance Trust Fund has accumulated significant interest

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[11] The tax monies would be retained until the taxing statute were declared unconstitutional. In this regard, it is noteworthy that both the Anti-Injunction Act, 26 U.S.C. § 7421(a), and the Declaratory Judgment Act, 28 U.S.C. § 2201, prohibit the issuance of relief enjoining the collection of a tax. Thus, exporters could not enjoin the Federal Government from imposing an unconstitutional export tax, but could only pay the tax and sue for its return.

income), or expend the funds for public purposes which might otherwise have to be financed through constitutionally permitted taxation or borrowing. Compelling interest-free loans from exporters of commercial cargo is as much a prohibited burden on exports as collection of an *ad valorem* tax in the first place. If such a result is countenanced, then the burdening of exports through taxation has not been prohibited, as the Export Clause requires, but merely *limited*. In such a circumstance "the Export Clause would be more hollow than real because in the event that Congress imposed export taxes, equitable relief alone could not ameliorate the harm." *Cyprus Amax Coal Co. v. United States,* 205 F.3d 1369, 1373-74 (Fed. Cir. 2000), *cert. denied,* 532 U.S. 1065 (2001).

In this regard, *amici* note that the "general rule" of *Library of Congress v. Shaw*, 478 U.S. 310, 317 (1986), is that "*Apart from constitutional requirements* . . . interest does not run on a claim against the United States." (Emphasis added.) Thus, before resorting to the "general rule" of *Shaw*, as the Federal Circuit did, it is necessary to determine whether a constitutional requirement to pay interest exists under the Export Clause itself. The Federal Circuit did not make such an inquiry, but merely reasoned that since only the Takings Clause of the Fifth Amendment to the Constitution contains an *explicit* restorative clause, requiring the payment of "just compensation" for governmental takings, the Export Clause could not be construed to require the payment of interest.

Such an analysis is hardly persuasive. The Takings Clause anticipates that the government will lawfully exercise its takings power, and prescribes the compensation to be provided for such lawful action. By contrast, the Export Clause denies the government absolutely the power to tax exports. The Framers, having denied the government the

power to tax exports, could hardly have been expected to anticipate that the government would disregard this command, and thus provide a restorative clause. Indeed, if the Export Clause contained a restorative provision, the Clause would not prohibit the taxation of exports, but merely condition it. The Export Clause does not explicitly prescribe the return of unconstitutionally-taken taxes, yet this Court has discerned such a remedy in the clause.

This Court has not previously been called upon to determine whether the Export Clause itself requires the payment of interest on amounts unconstitutionally taxed. This is presumably because previous taxes struck down under the clause have been repaid with interest as required by statute. As noted above, *amici* submit that there is a statutory basis for the award of interest on refunds of the export HMTs. If the Court holds that interest is not provided by statute, however, then the question of whether the Export Clause itself requires the payment of interest is an original issue of Constitutional interpretation which by itself would justify granting the writ of *certiorari*.

C. The Commercial and Financial Importance of the Case Supports Granting of the Writ

Finally, the commercial and financial importance of the issues presented in this case support granting the writ of *certiorari*.

During the years the unconstitutional export HMT was in force, taxes of more than $1.4 billion were collected on exports. More than 3000 lawsuits were filed and remain pending in the United States Court of International Trade, seeking refunds of unconstitutional export HMT refunds. To date, the CIT has issued judgments awarding more than $750

million in refunds of export HMT principal to the exporter-plaintiffs in these lawsuits, while staying the award of interest. This Court's determination concerning whether interest is payable on refunds of the export HMT will permit the resolution of these thousands of lawsuits.

Furthermore, the Customs Service is currently processing more than 7,500 additional administrative applications for refunds of the unconstitutional export HMT. At present, Customs is refunding tax principal amounts, without interest, and exporters have filed protests challenging the agency's failure to provide interest on these refunds. This Court's determination regarding whether interest is payable on export HMT refunds will permit the orderly resolution of these thousands of additional refund claims.

Given the considerable financial interests at stake, and the large number of potentially affected parties, the commercial and financial importance of the issues presented by Petitioner support the issuance of a writ of *certiorari*.

CONCLUSION

The petition for a writ of *certiorari* presents important questions of statutory construction and Constitutional law. Resolution of these issues will affect significant commercial interests and aid in the disposition of thousands of pending lawsuits and administrative tax refund claims. Given these factors, and the substantial merit of the arguments set forth in the petition, the writ of *certiorari* should issue.

Respectfully submitted,

John M. Peterson
Counsel of Record
Curtis W. Knauss
Maria E. Celis
NEVILLE PETERSON LLP
Counsel for Amici Curiae
80 Broad Street
34th Floor
New York, New York 10004
(212) 635-2730

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